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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,660	06/16/2000	Eric Teller	1148/015	2830
23861	7590	08/24/2004	EXAMINER	
METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/595,660

Applicant(s)

TELLER ET AL.

Examiner

Natalie A. Pass

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MLL

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-127 and 137-170 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 104-127 and 137-170 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 May 2004 has been entered.

2. This communication is in response to the Request for Continued Examination filed 28 May 2004 and amendment filed on 28 May 2004. Claims 1-103 have been previously cancelled. Claims 128-136 have been cancelled. Claims 104, 110-111, 113, 115-116, 118, 120-121, 123-124, 126-127, 138, 140-141, 143, 145-146 have been amended. Claims 105-109, 112, 114, 117, 119, 122-123, 125, 137, 139, 142, 144 have been previously added. Claims 147-170 have been newly added. Claims 104-127, 137-170 remain pending.

Specification

3. The objection to claims 109-110, 122-123, 125-126, 128-136 under 35 U.S.C. 132 because they introduced new matter into the disclosure is hereby withdrawn due to the amendment filed 28 May 2004.

Claim Rejections - 35 USC § 112

4. The rejection of claims 109-123, 125-146 under 35 U.S.C. 112, first paragraph, is hereby withdrawn due to the amendment filed 28 May 2004.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 104-112, 114, 117, 119, 124-127, 137, 139, 142, 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 for substantially the same reasons given in the previous Office Action (paper number 13). Further reasons appear hereinbelow.

(A) Claims 104, 124 have been amended to recite the limitation of

- "wearing a wearable" in line 6; and
- "wearable physiological monitoring" in line 9 .

As per claims 104, 124, Brown300 teaches a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, the method comprising:

establishing said physiological status goal according to certain preselected physiological parameters of said individual (Brown300; column 2, lines 57-67, column 6, lines 26-29, column 6, line 62 to column 7, line 18);

using said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal) and providing said status information to said individual (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18).

providing to said individual a treatment plan (reads on information indicative of a suggested change in said individual's performance to assist said individual in the achievement of said physiological status goal) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 45 to column 3, line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18).

Brown300 fails to explicitly disclose
wearing a wearable physiological monitoring device on the body of the individual; and
generating data indicative of one or more measured parameters of said individual using said wearable physiological monitoring device.

However, the above features are well-known in the art, as evidenced by Alyfuku.

In particular, Alyfuku teaches

wearing a wearable physiological monitoring device on the body of the individual (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30); and

generating data indicative of one or more measured parameters of said individual using said wearable physiological monitoring device (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Brown300 to include a wearing a wearable physiological monitoring device on the body of the individual and generating data indicative of one or more measured parameters of said individual using said wearable physiological monitoring device, as taught by Alyfuku, with the motivations of providing a networked vital information health monitoring system which is user-friendly and which is capable of detecting and monitoring vital

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signs passively in response to routine day-to-day physiological activities of individuals thereby to provide updated latest vital information, without causing the individuals to realize measurement, and thereby to provide a reliable vital information, which is useful in supporting home health care and maintenance for the purposes of prevention and early detection of diseases and continuation of therapy (Alyfuku; column 1, lines 56-67, column 6, lines 42-45).

(B) As per claims 105-108, Brown300 and Alyfuku teach a method as analyzed and discussed in claim 104 above

wherein said physiological status goal comprises a plurality of categories (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4);

wherein said status information is determined and provided with respect to each of said categories (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4);

wherein said categories relate to two or more of nutrition, activity level, mind centering sleep, and daily activities (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4); and

wherein said providing step comprises providing at least a portion of said status information in graphical form (Alyfuku; see at least Figure 3A, column II, Figure 41, Items S289 and S 296, Figure 48, Item S357, Figure 57, Item S507, Figure 58, Item S529 , column 8, lines 45-61).

(C) As per claims 109-112, 114, 117, 119, 125-127, 137, 139, 142, 144, Brown300 and Alyfuku teach a method as analyzed and discussed in claims 104 and 124 above

wherein at least two sensors selected from the group consisting of physiological sensors and contextual sensors are in electrical communication with said device, said sensors generating data indicative of at least a first parameter and a second parameter of said individual (Alyfuku; see at least Figure 19, Item 89, Figure 11, Item 91, column 8, lines 25-29, 45-52, column 14, line 52 to column 16, line 2, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

said generating step further comprising generating derived data based on said data indicative of at least a first parameter and a second parameter, said one or more measured parameters including said derived data (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48);

said data indicative of one or more measured parameters including said data indicative of at least a first parameter and a second parameter, said using step further comprising generating derived data based on said data indicative of at least a first parameter and a second parameter, and using at least said derived data to determine said status information and said relative degree of achievement (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column

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16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48); and

said at least two sensors being chosen from the group consisting of respiration sensors, temperature sensors, heat flux sensors, body conductance sensors, body resistance sensors, body potential sensors, brain activity sensors, blood pressure sensors, body impedance sensors, body motion sensors, oxygen consumption sensors, body chemistry sensors, body, position sensors, body pressure sensors, body impedance sensors, body motion sensors, oxygen consumption sensors, body chemistry sensors, body position sensors, body pressure sensors, light absorption sensors, piezoelectric sensors, electrochemical sensors, strain gauges, and optical sensors (Alyfuku; see at least Figure 41, Item S288, column 3, line 65 to column 4, line 29); and

wherein said derived data comprises data relating to at least one of activity level, sleep, nutrition, stress level and relaxation level (Alyfuku; see at least Figure 3A, column II, column 3, line 65 to column 4, line 37, column 8, lines 45-52, column 11, line 59 to column 12, line 4).

7. Claims 113, 118, 138, 143, 149, 152-153, 157, 167-170 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 as applied to claims 104 and 124 above, and further in view of Korenman et al, U.S. Patent Number 6, 067, 468.

(A) As per claims 113, 118, 138, 143, Brown300 and Alyfuku teach a method as analyzed and discussed in claims 104 and 109, 111, 124 and 127 above.

Brown300 and Alyfuku fail to explicitly disclose

said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, and a temperature sensor adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin.

However, the above features are well-known in the art, as evidenced by Korenman.

In particular, Korenman teaches said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, and a temperature sensor adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin (Korenman; see

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at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, and a temperature sensor adapted to generate data indicative of a temperature of said individual's skin said data indicative of at least a first parameter and a second parameter comprising at least two of said data indicative of motion said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin, as taught by Korenman, with the motivations of testing an aspect of a user's physiological condition which provides an information display which may be viewed by the user and which provides information about the user's current condition, and to display to the user an indication of the physiological parameters measured (Korenman; column 2, lines 2-23, column 3, lines 21-24).

(B) As per claims 149, 152, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in claims 104 and 124 above

said wearable physiological monitoring device having at least two sensors, said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, a temperature sensor adapted to generate data indicative of a temperature of said individual's skin, an impedance sensor adapted to generate data indicative of an impedance of said individual's body, and a pulse rate sensor adapted to generate data indicative of a pulse rate of said individual, said physiological monitoring device generating at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity, said data indicative of a temperature of said individual's skin, said data indicative of impedance, and said data indicative of pulse rate when worn by said individual; said data indicative of one or more measured parameters being generated using said at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity, said data indicative of a temperature of said individual's skin, said data indicative of impedance, and said data indicative of pulse rate (Alyfuku; see at least Figure 41, Item S288, column 3, line 65 to column 4, line 29), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Korenman, are as given in the rejection of claims 104, 113, and 124 above, and incorporated herein.

(C) Claim 153 differs from claim 104 in that it is a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal that comprises wearing a wearable physiological monitoring device on the body of the individual, said wearable physiological monitoring device having at least two sensors rather than a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal that comprises generating data indicative of one or more measured parameters.

As per claim 153, Brown300, Alyfuku and Korenman teach a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, the method comprising:

establishing said physiological status goal according to certain preselected physiological parameters of said individual (Brown300; column 2, lines 57-67, column 6, lines 26-29, column 6, line 62 to column 7, line 18);

wearing a wearable physiological monitoring device on the body of the individual, said wearable physiological monitoring device having at least two sensors, said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body

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potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, and a temperature sensor adapted to generate data indicative of a temperature of said individual's skin, said wearable physiological monitoring device generating at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin when worn by said individual (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30) , (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56);

generating data indicative of one or more measured parameters of said individual using at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin (Alyfuku; see at least Abstract, Figure 37, Item 183, Figure 41, Item S288, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 3, line 65 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column

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17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56);

using said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal) and providing said status information to said individual (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45, column 5, lines 38-43, column 6, line 34 to column 7, line 18), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Korenman, are as given in the rejection of claims 104, 113, and 124 above, and incorporated herein.

(D) Claim 157 differs from claim 153 in that it is a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal that comprises providing information indicative of a suggested change in said individual's performance to assist said individual rather than a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal that comprises providing status information to said individual.

As per claim 157, Brown300, Alyfuku and Korenman teach a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal, the method comprising:

establishing said physiological status goal according to certain preselected physiological parameters of said individual (Brown300; column 2, lines 57-67, column 6, lines 26-29, column 6, line 62 to column 7, line 18);

wearing a wearable physiological monitoring device on the body of the individual, said wearable physiological monitoring device having at least two sensors, said at least two sensors being two of a body motion sensor adapted to generate data indicative of motion, a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current, a heat flux sensor adapted to generate data indicative of heat flow, a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual, and a temperature sensor adapted to generate data indicative of a temperature of said individual's skin, said wearable physiological monitoring device generating at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin when worn by said individual (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20,

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lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30) ,
(Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column
3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56);

generating data indicative of one or more measured parameters of said individual using at
least two of said data indicative of motion, said data indicative of resistance of said individual's
skin to electric current, said data indicative of heat flow, said data indicative of heart beats or
muscle or brain activity and said data indicative of a temperature of said individual's skin
(Alyfuku; see at least Abstract, Figure 37, Item 183, Figure 41, Item S288, Figure 42, Item 209,
Figure 43, Items S304 to S309, column 1, lines 7-17, column 3, lines 20-31, column 3, line 65 to
column 5, line 7, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line
54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column
17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines
15-47, column 26, line 18 to column 27, line 30), (Korenman; see at least Abstract, Figure 1,
Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column
6, lines 26-56);

using said data indicative of one or more measured parameters to compare target
parameters to actual parameters (reads on to determine the relative degree of achievement of said
individual's performance with relation to said physiological status goal) (Brown300; see at least
Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3,
line 45 , column 5, lines 38-43, column 6, line 34 to column 7, line 18), (Korenman; see at least
Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4,
lines 6-31, column 6, lines 26-56); and

providing, to said individual, information such as a treatment plan (reads on indicative of a suggested change in said individual's performance to assist said individual in the achievement of said physiological status goal) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 45 to column 3, line 45, column 5, lines 38-43, column 6, line 34 to column 7, line 18).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Korenman, are as given in the rejection of claims 104, 113, and 124 above, and incorporated herein.

(E) As per claims 167, 169, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in claims 104 and 153 above

further comprising receiving sensor data from one or more sensor devices, said one or more sensor devices measuring said sensor data from the individual, and using said sensor data in addition to said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine said status information) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45, column 5, lines 38-43, column 6, line 34 to column 7, line 18), (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Korenman, are as given in the rejection of claims 104, 113, and 124 above, and incorporated herein.

(F) As per claims 168, 170, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in claims 124 and 157 above

further comprising receiving sensor data from one or more sensor devices, said one or more sensor devices measuring said sensor data from the individual, and using said sensor data in addition to said data indicative of one or more measured parameters to compare target parameters to actual parameters (reads on determine said relative degree of achievement) (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 57 to column 3, line 45, column 5, lines 38-43, column 6, line 34 to column 7, line 18), (Alyfuku; Figure 11, Item 91, Figure 20, Figure 21, Figure 22, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 17, line 35 to column 18, line 46, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56).

The motivations for combining the respective teachings of Brown300, Alyfuku, and Korenman, are as given in the rejection of claims 104, 113, and 124 above, and incorporated herein.

8. Claims 115-116, 120-121, 140-141, 145-146, 154-156, 158-166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter

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known as Brown300, in view of Alyfuku et al, U.S. Patent Number 5, 410, 471 and Korenman et al, U.S. Patent Number 6, 067, 468 as applied to claims 104, 113 and 118 above, and further in view of Pottgen et al, U.S. Patent Number 5, 813, 994 and Nasiff, U.S. Patent Number 4, 757, 453.

(A) As per claims 115, 120, 140, 145, 155, 159, Brown300, Alyfuku and Korenman teach a method as analyzed and discussed in claims 104, 113, 118, 124, 138' 153 and 157 above.

Brown300, Alyfuku and Korenman fail to explicitly disclose said at least two sensors being said body motion sensor and said heat flux sensor, wherein said derived data and said one or more measured parameters comprises data relating to calories burned and is generated using at least said data indicative of motion and said data indicative of heat flow.

However, the above features are well-known in the art, as evidenced by Pottgen.

In particular, Pottgen teaches said heat flux sensor, wherein said derived data and said one or more measured parameters comprises data relating to calories burned and is generated using at least said data indicative of heat flow (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300, Alyfuku and Korenman to include said heat flux sensor, wherein said derived data and said one or more measured parameters comprises data relating to calories burned and is generated using at least said data indicative of heat flow, as taught by Pottgen, with the motivations of monitoring caloric expenditure, by measuring components of heat flow, since the determination of caloric

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expenditure is an important component of any weight control or fitness program (Pottgen; column 1, lines 19-21, column 2, lines 21-47).

Brown300, Alyfuku and Korenman fail to explicitly disclose wherein said derived data and said one or more measured parameters is based on at least said data indicative of motion.

However, the above features are well-known in the art, as evidenced by Nasiff.

In particular, Nasiff teaches said body motion sensor wherein said derived data and said one or more measured parameters comprises data relating to calories burned or energy spent and is generated using at least said data indicative of motion (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined art of Brown300, Alyfuku and Korenman to include said body motion sensor wherein said derived data and said one or more measured parameters comprises data relating to calories burned or energy spent and is generated using at least said data indicative of motion, as taught by Nasiff, with the motivations of providing a body activity monitor to be used for extended periods of time and during all normal daily activities that gives continuous energy expenditure data, is comfortable to the patient, be easily applied to the patient, and measures total body activity as directly as possible, including measuring the work done [calories used] by the motion of the major moving elements of the body (Nasiff; column 1, lines 15-26, column 2, lines 13-37).

(B) As per claims 116, 121, 141, 146, 156, 160, Brown300, Alyfuku, Korenman, Pottgen, and Nasiff teach a method as analyzed and discussed above

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said at least two sensors further including said skin conductance sensor, wherein said data relating to calories burned is generated using at least said data indicative of motion, said data indicative of heat flow and said data indicative of resistance of said individual's skin to electric current (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56),(Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41), (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

The motivations for combining the respective teachings of Brown300, Alyfuku, Korenman, Pottgen, and Nasiff are as given in the rejection of claims 104, 113, 115, 118, 124, 138 and 153 above, and incorporated herein.

(C) As per claims 154, 158, Brown300, Alyfuku, Korenman, Pottgen, and Nasiff teach a method as analyzed and discussed in claims 153 and 157 above

said wearable physiological monitoring device having a body motion sensor adapted to generate data indicative of motion (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14),

a skin conductance sensor adapted to generate data indicative of the resistance of said individual's skin to electric current (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56),

a heat flux sensor adapted to generate data indicative of heat flow (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41),

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a body potential sensor adapted to generate data indicative of heart beats or muscle or brain activity of said individual (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56), and

a temperature sensor adapted to generate data indicative of a temperature of said individual's skin (Alyfuku, column 3, line 65 to column 4, line 30),

said wearable physiological monitoring device generating said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin when worn by said individual (Alyfuku, column 3, line 65 to column 4, line 30), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56), (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41), (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

said data indicative of each of said one or more measured parameters being generated using at least two of said data indicative of motion, said data indicative of resistance of said individual's skin to electric current, said data indicative of heat flow, said data indicative of heart beats or muscle or brain activity and said data indicative of a temperature of said individual's skin (Alyfuku, column 3, line 65 to column 4, line 30), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56), (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41), (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

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The motivations for combining the respective teachings of Brown300, Alyfuku, Korenman, Pottgen, and Nasiff are as given in the rejection of claims 104, 113, 115, 118, 124, 138, 153 and 157 above, and incorporated herein.

(D) As per claims 161-166, Brown300, Alyfuku, Korenman, Pottgen, and Nasiff teach a method as analyzed and discussed in claims 113, 118, 138, 143, 153 and 157 above said at least two sensors being said body motion sensor and said body or skin potential sensor, wherein said derived data and said measured parameters comprises data relating to calories burned and is generated using at least said data indicative of motion and said data indicative of heart beats (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56), (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14), (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41).

The motivations for combining the respective teachings of Brown300, Alyfuku, Korenman, Pottgen, and Nasiff are as given in the rejection of claims 104, 115, 124, 138, 153 and 157 above, and incorporated herein.

9. Claim 122 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471 as applied to claim 104 above, and further in view of Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119.

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(A) As per claim 122, Brown300 and Alyfuku teach a method as analyzed and discussed in claim 104 above.

Brown300 and Alyfuku fail to explicitly disclose a method further comprising the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data.

However, the above features are well-known in the art, as evidenced by Brown119.

In particular, Brown119 teaches a method further comprising the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data (Brown119; column 2, line 60 to column 3, line 8, column 3, line 59 to column 4, line 9, column 7, lines 19-39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include the step of aggregating said data indicative of one or more measured parameters with data collected from a plurality of individuals to create aggregate data, as taught by Brown119, with the motivations of collecting a subset of the data set from the set of inputs, allowing a reduction in the number of direct connections between the processing means and the inputs and utilizing the data aggregation means for storing data for multiple patients for use in epidemiological research (Brown119; column 2, line 67 to column 3, line 8, column 3, line 59 to column 4, line 9).

10. Claim 123 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent

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Number 5, 410, 471 and Brown et al, U.S. Patent Number 6, 032, 119, hereinafter known as Brown119, as applied to claims 104 and 122 above, and further in view of Brown et al, U.S. Patent Number 5, 913, 310, hereinafter known as Brown310.

(A) As per claim 123, Brown300, Alyfuku and Brown119 teach a method as analyzed and discussed in claims 104 and 122 above.

Brown300, Alyfuku and Brown119 fail to explicitly disclose a method further comprising the step of creating reports based on said aggregate data.

However, the above features are well-known in the art, as evidenced by Brown310.

In particular, Brown310 teaches a method further comprising the step of creating reports based on said aggregate data (Brown310; column 20, lines 35-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300, Alyfuku and Brown119 to include the step of creating reports based on said aggregate data, as taught by Brown310, with the motivations of statistically analyzing the data for use in epidemiological research (Brown310; column 20, lines 35-45).

11. Newly added claims 147, 148, 150, 151 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, U.S. Patent Number 5, 951, 300, hereinafter known as Brown300, and Alyfuku et al, U.S. Patent Number 5, 410, 471, as applied to claims 104 and 124 above, and further in view of Pottgen et al, U.S. Patent Number 5, 813, 994.

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(A) As per newly added claims 147, 148, 150, 151, Brown300 and Alyfuku teach a method as analyzed and discussed in claims 104 and 124 above.

Brown300 and Alyfuku fail to explicitly disclose

said wearable physiological monitoring device being part of an armband; and

said wearable physiological monitoring device being part of a garment.

However, the above features are well-known in the art, as evidenced by Pottgen.

In particular, Pottgen teaches

said wearable physiological monitoring device being part of an armband (Pottgen, column 5, lines 27-37); and

said wearable physiological monitoring device able to be worn on the subject's body with no significant limitation on motion or mobility (reads on being part of a garment) (Pottgen, column 2, lines 62-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for assisting an individual of Brown300 and Alyfuku to include said wearable physiological monitoring device being part of an armband; and said wearable physiological monitoring device being part of a garment, as taught by Pottgen, with the motivations of minimizing and compensating for the shortcomings of conventional heat flow sensors so that all components of evaporative heat flow can be measured by incorporating a small, portable, relatively inexpensive sensor that can be worn on the subject's body with no significant limitation on motion or mobility (Pottgen; column 2, line 62 to column 3, line 21).

Response to Arguments

12. Applicant's arguments filed 28 May 2004 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the responses filed 28 May 2004.

(A) At pages 27-29 of the 28 May 2004 response, Applicant argues that the limitations introduced in the amendment of 28 November 2003 did not introduce new matter into the specification, and points to support for the newly added limitations in the originally filed specification. Examiner thanks Applicant for this argument and has canceled the objection and rejection under 35 U.S.C. 112, first paragraph.

(B) At pages 31-33 of the 28 May 2004 response, Applicant argues that the features in the Application are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes as missing in the applied references, including the newly added features in the 28 May 2004 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Brown300, Alyfuku, Korenman, Pottgen, Nasiff, Brown119, and Brown310, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 13), and incorporated herein. In particular, Examiner notes that the recited features of wearing a wearable physiological monitoring device

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in a method to assist an individual in the achievement of said physiological status goal are taught by the combination of applied references (Brown300; see at least Figure 3A, Item 32, column 1, lines 26-36, column 2, lines 6-9, column 2, line 45 to column 3, line 45, column 5, lines 38-43, column 6, line 34 to column 7, line 18), (Alyfuku; see at least Abstract, Figure 11, Item 91, Figure 19, Item 89, Figure 37, Item 183, Figure 42, Item 209, Figure 43, Items S304 to S309, column 1, lines 7-17, 56-67, column 3, lines 20-31, column 4, line 30 to column 5, line 7, column 6, lines 42-45, column 8, lines 45-51, column 11, line 59 to column 12, line 4, column 12, line 54 to column 13, line 2, column 14, line 52 to column 16, line 2, column 15, lines 9-25, column 17, lines 35-45, column 19, lines 16-26, 40-49, column 20, lines 27-31, 46-48, column 24, lines 15-47, column 26, line 18 to column 27, line 30). The Examiner interprets, for example, Alyfuku's "[a] measuring finger cuff 183 of the sphygmomanometer is detachably affixed to the handle 181 to permit the user to wear it for monitoring of the artery blood pressure and pulse rate during exercise" (Alyfuku; column 24, lines 35-40) as reading on a wearable physiological monitoring device; and the Examiner interprets Brown300's "[t]he medical treatment regimen specifies target health parameters, while the health profile specifies actual health parameters of the patient. The treatment plan is generated by comparing the target parameters to the actual parameters" and "...such parameters include target range of blood glucose levels, weight..." (Brown300; column 2, lines 56-60, column 6, lines 25-45) as reading on a method to assist an individual in the achievement of said physiological status goal.

(C) At pages 31-36 of the 28 May 2004 response, Applicant analyzes the applied references separately and argues each of the references individually.

In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Furthermore, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. And although the motivation or suggestion to make modifications must be articulated, it is respectfully submitted that there is no requirement that the

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motivation to make modifications must be expressly articulated within the references themselves.

References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that the Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re Delisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lahu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al* 192 USPQ 278 (CCPA) that:

- (i) obvious does not require absolute predictability;
- (i) non-preferred embodiments of prior art must also be considered; and
- (i) the question is not express teaching of references but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. In *In re Conrad* 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

In the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references is accompanied by select portions of the respective reference(s)

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which specifically support that particular motivation. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood* 28 USPQ 2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

As such, it is respectfully submitted that Applicant appears to view the applied references separately and in a vacuum, without considering the knowledge of average skill in the art, and further fails to appreciate the breadth of the claim language that is presently recited.

With regard to Applicant's argument at pages 32-33 of the 28 May 2004 response that the applied art fails to disclose the limitations of claims 105-108 with regard to categories relating to the specific status goals, Examiner respectfully disagrees. Examiner interprets, for example, Alyfuku's "Excretion Sleeping Bathing Exercise Rest" categories of measurement (Alyfuku; Figure 3A, column II) as categories related to specific status goals.

In response to Applicant's argument at pages 33-36 of the 28 May 2004 response that the applied art fails to disclose the limitations of newly added claims 153 and 157, all of the limitations which Applicant disputes as missing in the applied references, including the newly added features in the 28 May 2004 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Brown300, Alyfuku, Korenman, Pottgen, Nasiff, Brown119, and Brown310, based on the logic and sound

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scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 13), and incorporated herein. In particular, Examiner notes that the recited features of wearing a wearable physiological monitoring device on the body of the individual, said wearable physiological monitoring device having at least two sensors, in a method for assisting an individual to monitor, control and modify certain aspects of the individual's physiological status according to a preset physiological status goal are taught by the combination of applied references. See, for example, (Alyfuku, column 3, line 65 to column 4, line 30), (Korenman; see at least Abstract, Figure 1, Figure 2C, Figure 3, column 2, lines 31-38, column 3, lines 35-46, column 4, lines 6-31, column 6, lines 26-56), (Pottgen; see at least Abstract, column 2, line 61 to column 3, line 21, column 5, lines 11-41), and (Nasiff; see at least Abstract, column 2, line 13 to column 3, line 14).

In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Furthermore, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. And although the motivation or suggestion to make modifications must be articulated, it is respectfully submitted that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references is accompanied by select portions of the respective reference(s) which specifically support that particular motivation. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood* 28 USPQ 2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches an exercise device with an audible electronic monitor (5, 857, 939), a portable aerobic fitness monitor (5, 976, 083), and an electronic exercise system (6, 450, 922).

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14. This is a RCE of applicant's earlier Application No. 09/595,660. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

15. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to: **(703) 305-7687.**

For informal or draft communications, please label
“PROPOSED” or “DRAFT” on the front page of the
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

Hand-delivered responses should be brought to Crystal Park 5,
2451 Crystal Drive, Arlington, VA, Seventh Floor (Receptionist).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (703) 305-3980. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

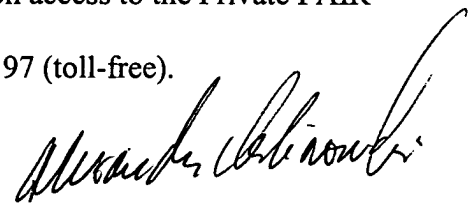
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (703) 305-9588. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

August 19, 2004



ALEXANDER KALINOWSKI
PRIMARY EXAMINER